01.12.2015

The instant petition under Article 227 of the Constitution of India is to quash the order dated 15.4.2006 passed by the learned Civil Judge (Sr.Division), Parelakhemundi in Title Suit No.7 of 2001. By the said order, the learned trial court rejected the application for amendment of plaint.

The petitioner as plaintiff instituted T.S.No.7 of 2001 in the court of the learned Civil Judge (Sr.Division), Parelakhemundi for declaration of right, title, interest, possession and for permanent injunction. Since there was some error in the plaint with regard to the boundary, application for amendment of plaint was filed. Defendant no.1 filed a separate counter to the same. The learned trial court came to hold that the proposed amendment is not necessary for determining the real question in controversy between the parties and same shall work as injustice to the defendants 2 and 3. Having held so, the learned trial court rejected the application.

Heard Mr.Debasis Pattnaik, learned counsel for the petitioner. None appears for the opposite parties.

On a cursory perusal of the application for amendment, vide Annexure-2, it is evident that the plaintiff intended to incorporate the following paragraph:-

5.a. That the plaintiff had purchased revenue Plot No.83 in full and a part of revenue Plot No.83/917 from the predecessor in title and possession i.e., the defendant no.1 vide RSD No.2715/2000, DSRO Parlakhemundi on dt.5.9.2000. The said property was sold by the defendant no.2 and 3 to the defendant no.1 under RSD No.1957/95 DSRO, Parlakhemundi on dt.26.7.1995 and delivered the

physical possession thereof, and the defendant no.1 was in enjoyment over the said property until he sold the same in favour of the plaintiff vide the RSD 2715/2000 as mentioned supra.

That the description of the property in the sale deed as well as in the plaint schedule i.e. Revenue/Settlement Plot No.83 is easily and sufficiently identifiable irrespective and independent of the boundaries described therein. Any mis-description of the boundaries cannot in any manner take away the rights of the plaintiff over the said property under any circumstances

That in the schedule the description of the boundaries given against the suit plot No.83 and 83/917 be deleted.

So far as the first paragraph of proposed amendment that the plaintiff had purchased the land by means of Registered Sale Deed No.2715 of 2000 is concerned, the same is formal in nature. The foundational facts already exist and the said portion of the amendment shall not change the nature and character of the suit. But then the sub paragraph of the proposed amendment starting from description of the property in the sale deed as well as in the plaint schedule i.e. Revenue/Settlement Plot No.83 is easily and sufficiently identifiable irrespective and independent of the boundaries described therein. Any mis-description of the boundaries cannot in any manner take away the rights of the plaintiff over the said property under any circumstances under any circumstances will really create confusion relating to description of the suit property. The same is not really necessary for determining the real controversy between the

parties.

In view of the same, the said part of the amendment is rejected.

With the aforesaid observation, the petition is disposed of. The plaintiff shall pay a cost of Rs.2,500/-(Two thousand five hundred) to the contesting defendants within a p

eriod of four weeks from today, failing which, this order will automatically be recalled. The learned trial court is directed to conclude the hearing of the suit by end of March, 2016.

.
Dr.A.K.Rath, J.